

RULEMAKING NOTICE FORM

Notice Number 2015-127

Rule Number He-C 6420

1. Agency Name & Address:

**NH Dept. of Health & Human Services
Division for Children, Youth & Families
Thayer Building, 1st Floor
129 Pleasant St.
Concord, NH 03301**

2. RSA Authority:

RSA 170-G:5

3. Federal Authority:

4. Type of Action:

Adoption

Amendment

Repeal

Readoption

Readoption w/amendment X

5. Short Title: **Medicaid Covered Services**

6. (a) Summary of what the rule says and of any proposed amendments:

He-C 6420 describes the services provided by residential treatment programs and foster care programs (Individual Service Options Foster Care and Therapeutic Foster Care) licensed under RSA 170-E, which are reimbursable under the New Hampshire Medicaid program. The rule also describes the Medicaid covered services and the conditions for non-Medicaid covered services for children in these types of programs. Proposed changes to the rule include:

- Updates to terminology used for services provided by residential treatment programs per He-C 6350 and foster care programs per He-C 6355, which were readopted and updated in 2015;
- Updates to reflect current licensing and oversight boards which have changed since the rule's last iteration; and
- Inclusion of cites to federal references which were absent previously and which support the justification of continued Medicaid covered services under these two programs.

This rule is scheduled to expire on November 17, 2015, but is subject to extension pursuant to RSA 541-A:14-a.

6. (b) Brief description of the groups affected:

This rule impacts all Medicaid recipients receiving Medicaid covered services provided by residential treatment programs and foster care programs licensed under RSA 170-E, as well as those providers.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Federal Reg./RSA
He-C 6420.01	RSA 170-E; RSA 170-G:4; 42 CFR 435.1009
He-C 6420.02	RSA 170-G:4,III; RSA 170-E:25, II & VIII; 42 CFR 440:130; 42 CFR 434.2, 434.12
He-C 6420.03	RSA 169-B
He-C 6420.04	42 CFR 440.130; RSA170-G:4
He-C 6420.05	RSA 170-E:25-49; RSA 329; RSA 326-B:1; RSA 330-A:16
He-C 6420.06	42 CFR 440.50, 110, and 130; 42 CFR 441.50 & Part 441, subpart B
He-C 6420.07	RSA 170-E; RSA 170-G:4; 42 CFR 435.1009
He-C 6420.08	RSA 170-G:4, VIII; 42 CFR 435.1009
He-C 6420.09	RSA 170-E; RSA 170-G:4
He-C 6420.10	RSA 151

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Michael Holt	Title:	Rules Coordinator
Address:	Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301	Phone #:	271-9234
		Fax#:	271-5590
		E-mail:	michael.holt@dhhs.state.nh.us

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
[**http://www.dhhs.nh.gov/oos/aru/comment.htm**](http://www.dhhs.nh.gov/oos/aru/comment.htm)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tuesday, August 25, 2015**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, August 18, 2015 at 2:00 PM**

Place: [**DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **15:128**, dated **7/10/15**

- 1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

- 2. Cite the Federal mandate. Identify the impact of state funds:**

No federal mandate, no impact on state funds.

- 3. Cost and benefits of the proposed rule(s):**

- A. To State general or State special funds:**

None.

- B. To State citizens and political subdivisions:**

None.

- C. To Independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-C 6420, effective 11/17/07 (Document # 9028), to read as follows:

PART He-C 6420 MEDICAID COVERED SERVICES

Statutory Authority: RSA 170-G:5

He-C 6420.01 Scope. These rules shall apply to:

(a) Residential treatment programs licensed under RSA 170-E and certified for payment pursuant to He-C 6350, with the exception of independent living homes;

(b) Residential child care facilities-treatment programs located outside of New Hampshire that are licensed in accordance with their state's rules and certified for payment pursuant to He-C 6350; and

(c) Providers of the following placement services under the foster care programs licensed under RSA 170-E and certified for payment pursuant to He-C 6355:

(1) Individual service options foster care; and

(2) ~~Therapeutic foster care programs licensed under RSA 170-E and certified for payment pursuant to He-C 6355.~~

He-C 6420.02 Definitions.

(a) "Case plan" means the division for children, youth and families (DCYF) ~~or the division for juvenile justice services (DJJS)~~ written plan for the child and the family, which outlines how services will be provided, pursuant to RSA 170-G:4, III and 42 U.S.C. 671, Part E-federal payments for foster care and adoption assistance 42 USC 671(a)(16) and 42 USC 675(5)(a)-(D) SEC. 471(a)(16), and 475(5)(A and D) state plan for foster care and adoption assistance. This term includes "placement plan."

(b) "Child" means "child" as defined in RSA 170-E:25, I. The term includes "youth" and "resident."

~~(b)(c)~~ "Covered service" means a service identified pursuant to He-C 6420.04~~5~~ that is reimbursable under the state Medicaid program for private non-medical institutions (PNMI), therapeutic foster care, or individual service option (ISO) foster care and provided to a child or family.

~~(e)(d)~~ "Department" means the department of health and human services of the state of New Hampshire.

~~(d)(e)~~ "Division for children, youth and families (DCYF)" ~~means the division for children, youth and families means the organizational unit~~ of the department of health and human services ~~that provides services to children and youth referred by courts pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-B, RSA 170-C, and RSA 463.~~

~~(e) "Division of juvenile justice services (DJJS)" means the division for juvenile justice services of the department of health and human services.~~

(f) "Foster care agency program" means a licensed child-placing agency licensed under RSA 170-E:25 which recruits, trains, licenses and supervises foster family homes and provides parental care in a licensed foster home on a regular, 24 hours a day residential basis. by anyone other than a relative.

(g) “Individual service option (ISO) foster care” means a foster ~~family~~-care program in which a variety of intensive therapeutic, social and community based services are provided or coordinated to meet the individual needs of a child and his or her family.

(h) “Medicaid” means the Title XIX and Title XXI programs administered by the department which makes medical assistance available to eligible individuals.

~~(h)~~(i) “Medicaid time study” means the method used to identify the portion of a provider’s budget devoted to treatment intervention and rehabilitation services, education, room and board, and administrative activities to identify costs that are reimbursable under the ~~NH~~ Medicaid program for PNMI covered service.

~~(i)~~(j) “Per diem rate” means the amount paid to a provider for each Medicaid eligible child receiving residential or foster care services.

~~(j)~~(k) “Prescribing practitioner” means any of the following state licensed health care providers that provide services identified in 42 CFR 440:130 to reduce a physical, ~~or mental-intellectual, or~~ behavioral disability and aid in the restoration of a recipient to their best functional level:

(1) Health care providers licensed in accordance with RSA 326-B;

(2) Physicians;

(3) Physician assistants;

(4) Advanced practice Registered nurses (APRN); and

~~(5) Licensed practical nurses (LPN); and~~

~~(6)~~(5) Any practitioner licensed by the NH board of mental health practice or NH board of psychologists.

~~(k)~~(l) “Private non-medical institution (PNMI)” means a residential treatment ~~agency or facility~~ program as defined in 42 CFR 434.2, licensed and certified for payment by the department.

~~(l)~~(m) “Provider” means foster care ~~agency program~~ or residential treatment program ~~facility~~.

~~(m) “Resident” means a child or youth who is eligible to receive covered services pursuant to He-C 6420.04.~~

(n) “Rehabilitative services,” pursuant to 42 CFR 440.130 (d), includes any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a beneficiary to his best possible functional level.

~~(n)~~(o) “Residential ~~facility~~ treatment program” means “child care agency” as defined in RSA 170-E:25, II, including shelter care facilities ~~and experiential wilderness facilities~~ as defined in RSA 170-E:25, VIII.

~~(o)~~(p) “Therapeutic foster care (TFC)” means a foster ~~family~~-care program that has a family-centered focus in which experienced foster parents and clinical support staff provides comprehensive and

intensive clinical and therapeutic services to children who have chronic mental, emotional, physical, or behavioral problems that require a therapeutic treatment plan, individual supervision, and consistent programmatic structure for the child in an intensive family environment.~~and their families and implements a structured treatment plan.~~

(pq) “Treatment plan” means the residential ~~facility’s treatment program~~ or foster care program’s ~~agency’s~~ written, time-limited, goal-oriented therapeutic plan for the child and family developed by the treatment team~~family, the residential facility’s staff or the foster care agency’s staff and DCYF or DJJS,~~ which includes strategies to address the issues that brought the child into placement and which is consistent with rehabilitative services.

He-C 6420.03 Child Eligibility.

(a) To be eligible for Medicaid-~~PNMI~~ reimbursement for covered services, an individual shall be:

- (1) Identified as a child or youth who is receiving residential services pursuant to RSA 169-B, RSA 169-C, or RSA 169-D; and
- (2) A ~~categorically or medically needy~~ Medicaid recipient, ~~as described in He-W 602.04;~~ and
- ~~(3) Less than 21 years of age.~~

He-C 6420.04 Covered Services.

(a) Medicaid ~~C~~covered services ~~for PNMI~~ shall be provided ~~to residents~~to children as part of the residential component of a residential facility treatment program or foster care ~~agency~~ program and not be billed to the Medicaid to schools program pursuant to He-M 1301.

(b) Covered services shall be approved by the prescribing practitioner to be medically necessary, using the following criteria:

- (1) The services are designed to provide maximum reduction of ~~physical or mental~~physical, intellectual, or behavioral disability and restore a ~~recipient child~~ to his or her best possible functional level; and
- (2) There is no other equally effective course of treatment available on a fee-for-service basis that is more conservative, less restrictive, or substantially less costly than the per diem rate for residential treatment program~~facility~~ or foster care ~~agency program~~ services.

(c) Covered services shall:

- (1) Be provided ~~in accordance with~~through a child’s treatment plan; and
- (2) Be designed to meet the health and rehabilitative needs of a child to address his or her physical, intellectual, or ~~mental~~behavioral disability ~~impairments~~.

(d) ~~When provided as part of a program in a residential facility or foster care agency program,~~ eCovered services shall include:

- (1) Nursing services;

- (2) Occupational therapy, including evaluations, treatments or consultations necessary to implement a program of activities to develop or maintain skills necessary to achieve adequate and appropriate physical and mental functioning of a child;
- (3) Physical therapy, when provided by or under the supervision of a physical therapist, and for which there shall be a physician's written authorization for individual or group treatment, supplies, and equipment related to physical therapy;
- (4) Psychiatric services when necessary for the evaluation, diagnosis, and treatment of psychiatric problems;
- (5) Psychological services when necessary for the evaluation, diagnosis, and treatment of emotional or behavioral problems or disturbances;
- (6) Speech, language and hearing services when necessary for the evaluation, diagnosis, and treatment of speech, language, and hearing disorders;
- (7) Rehabilitative services, which shall be included in the treatment plan and based on a physician's written referral or a recommendation from a prescribing practitioner;
- (8) Behavioral health, other than psychiatric and psychological services referenced in (4) and (5) above; or
- (9) Any other remedial services as are necessary for the maximum reduction of a child's physical, intellectual, or mental/behavioral disabilities, excluding classroom instruction and academic tutoring.

(e) Nursing services referenced in (d)(1) above shall be performed by an RN, LPN or ARNP, and shall include:

- (1) Any evaluations, treatments, staff training, or consultations that are necessary for the child to be safely cared for;
- (2) Administration of medication;
- (3) Observation of children with chronic or acute illnesses in order to assure that medical needs are being appropriately identified, addressed and monitored; and
- (4) Other services allowed under their individual identified scope of practice for nursing services. ~~License of nursing services.~~

(f) Physical therapy services referenced in (d)(3) above shall include:

- (1) Evaluations;
- (2) Treatment; ~~or and~~
- (3) Consultation that might prevent, restore or alleviate a lost or impaired loss of or impairment of a physical function.

(g) Rehabilitative services referenced in (d)(7) above shall include:

- (1) Assistance with communication;
- (2) Behavior management;
- (3) Nutrition counseling;
- (4) Medication management and training;
- (5) Hygiene and personal care training;
- (6) Coordination of medical care; and
- (7) Development and implementation of individual treatment plans.

(h) Behavioral health services referenced in (d)(8) above shall include, at a minimum:

- (1) Behavior management;
- (2) Individual, group, and/or family counseling;
- (3) Substance ~~abuse~~ disorder counseling; and
- (4) Crisis intervention and stabilization.

He-C 6420.05 Qualifications for Providers of Covered Services.

(a) A provider ~~who offers services under these rules~~ shall be:

- (1) A residential ~~treatment program~~facility licensed by the department in accordance with RSA 170-E:25 through 49 as appropriate for the type of ~~facility program~~ and certified for payment by DCYF or ~~DJJS~~ in accordance with He-C 6350; or
- (2) A foster care ~~agency~~program licensed under RSA 170-E:25 and certified for payment by DCYF in accordance with He-C 6355; and
- (3) Enrolled as a New Hampshire ~~m~~Medicaid provider.

(b) Individuals who ~~are approved to~~ provide covered services under He-C 6420 shall be:

- (1) A physician licensed to practice in New Hampshire, pursuant to RSA 329;
- (2) An A~~P~~RN~~P~~, an RN, or an LPN licensed to practice in New Hampshire;
- (3) A psychiatrist licensed by the New Hampshire Board of Medicine to practice in New Hampshire; ~~and either board certified or board eligible according to the most recent regulations of the American Board of Psychiatry and Neurology, Inc. or its successor organization;~~
- (4) A psychologist licensed to practice in New Hampshire;

- (5) A family worker or case manager with a bachelor's degree in education, in a clinical field such as social work, marriage and family therapy, psychology, guidance counseling, or a degree which would make one eligible for a license from the NH board of mental health practice or NH board of psychologists or a related field with emphasis in human services and family systems, and have 2 years of human services experience~~human services, social work, psychology, or counseling;~~
- ~~(6) An alcohol/drug abuse counselor licensed by the state of New Hampshire, division of behavioral health services;~~
- (6) A certified recovery support worker (CRSW) certified by the NH board of licensing for alcohol and other drug use professionals or a licensed alcohol and drug counselor (LADC) or master's licensed alcohol and drug counselor (MLADC) licensed by the board of licensing for alcohol and other drug use professionals;
- (7) A ~~clinical treatment~~ coordinator, who is a full-time ~~employee, with a master's degree in social work, sociology, psychology, or guidance and counseling~~staff member employed by the residential treatment program or foster care program responsible for administrative oversight of the clinical services provided at the program. This term includes "treatment coordinator." The clinical coordinator shall meet the qualifications of (8) below;
- (8) A clinical staff member means individuals who have a master's degree in a clinical field such as social work, marriage and family therapy, psychology, guidance counseling, or a degree which would make one eligible for a license from the NH board of mental health practice or NH board of psychologists,~~with a master's degree in social work, psychology, education, guidance, social sciences, or a related field with an emphasis in human services;~~ or
- (9) Other child care staff approved by the department as meeting the requirements to work in a residential ~~facility program~~ or foster care ~~agency program~~ pursuant to RSA 170-E:25.
- (c) Staff of a residential ~~treatment program facility~~ shall meet the requirements in He-C 6350.
- (d) Staff of a foster care ~~program agency~~ shall meet the requirements in He-C 6355.
- (e) ~~Providers-Individuals~~ identified in (b) above who do not practice in New Hampshire shall be licensed, certified or otherwise approved as required by the laws and rules of the state where they do practice.

He-C 6420.06 Requirement for Medical Examinations.

~~(a) Residential facilities and foster care agencies shall assure that each child receives a medical exam through:~~

~~(1) The Child Health Assurance Program (CHAP); or~~

~~(2) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) according to the schedule in He-W 546.~~

(a) Residential treatment programs or foster care programs shall ensure the child's health needs are met, and as follows:

(1) For any initial placement of a child due to petitions filed under RSA 169-C, a comprehensive physical exam shall be arranged by the residential treatment program or foster care program in conjunction with the CPSW, to occur within the first 48 hours for a child up to the age of 2, or within 30 days of placement for a child between the age of 2 and 18;

(2) Shelter care programs shall comply with He-C 6350.18(d);

(3) The child shall receive all routine medical examinations and treatment pursuant to Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) pursuant to He-W 546; and

(4) Residential treatment programs shall comply with NH residential child care licensing rules He-C 4001.12.

(b) All medical exams as required in (a) shall be documented in the child's file.

He-C 6420.07 Documentation of Services.

(a) Residential ~~care facilities~~treatment programs that provide covered services pursuant to He-C 6420.04 shall document services for each child, including:

(1) A written treatment plan, as described in He-C 6350, which identifies Medicaid covered services that the child receives through the residential treatment program~~care facility~~;

(2) A case plan, ~~as defined in He-C 6420~~, completed by DCYF ~~or DJJS~~ staff, which shall be ~~submitted~~sufficient prior to the deadline for the establishment of the treatment required in (1) above;

(3) The signature of a prescribing practitioner on the child's treatment plan, indicating approval of the Medicaid covered service;

(4) Maintenance of logs, at least weekly, summarizing the Medicaid covered services that were provided to the child in accordance with a written treatment plan;

(5) Written progress reports on each child in accordance with He-C 6350;

(6) Compliance with other documentation requirements of He-C 6350, as appropriate for the level of certification; and

(7) Copies of claims submission for ~~PNM~~covered services to the Medicaid fiscal agent.

(b) Foster care ~~programs~~agencies that provide covered services pursuant to He-C 6420.04 shall document each service for each child, including:

(1) A written treatment plan, as described in He-C 6355, which identifies Medicaid covered services that the child receives at the ~~residential care facility~~foster care program;

(2) A case plan, ~~as described in He-C 6420~~, completed by DCYF ~~or DJJS~~ staff, which shall be sufficient prior to the deadline for the establishment of the treatment plan, required in (1) above;

(3) The signature of a prescribing practitioner on the child's treatment plan, indicating approval of the Medicaid covered service;

(4) Maintenance of daily logs, summarizing the Medicaid covered services that were provided to the child in accordance with a written treatment plan;

(5) Weekly notes completed by the case manager documenting Medicaid covered services per He-C 6355;

(56) Written progress reports on each child in accordance with He-C 6355;

(67) Compliance with other documentation requirements of He-C 6355, as appropriate for the level of certification; and

(78) Copies of claims submissions for PNMIcovered services to the Medicaid fiscal agent.

He-C 6420.08 Medicaid Time Study.

(a) Medicaid time studies shall be completed annually upon DCYF's request, once per current state fiscal year, and submitted with the annual residential rate setting budget to the DCYF and DJJS rate setter.

(b) Form 2145, "Individual Time Logs," form 2145, (January 2001), shall be used to record all activities provided by identified residential treatment program or foster care program staff during the Medicaid time study period.

(c) Form 2146, A "10-day Summary of Individual Time Logs," form 2146, (January 2001), shall be used to obtain the total hours of individual staff activity.

(d) A residential treatment program's or foster care program's form 2147 "Program Staff Summary," form 2147 (September 2015), shall be used to calculate the percentage of staff salaries that may be allocated to Medicaid.

He-C 6420.09 Payment for Services.

(a) Payments for PNMIcovered services provided in a residential treatment program or foster care program shall be made in accordance with per diem rates, as specified in (b) and (c) below.

(b) The percentages paid for Medicaid covered services are identified based on the Medicaid time study and annual budget, as a part of the residential per diem rate established pursuant to RSA 170-G:4, XVII-a. The PNMI rate shall be established by the department as a percentage of the residential per diem rate established under He C 6422, based on the residential facility's or foster care agency's Medicaid time study and annual budget proposal.

(c) PNMI-Medicaid portion of per diem rates shall have the following restrictions:

(1) Payments for services in out-of-state residential treatment programs or foster care programs shall be made only if equal services are not available within New Hampshire at the time the child is placed;

(2) Payments for professional medical services provided outside the residential ~~treatment program~~~~facility~~ or foster care ~~program~~~~agency~~ to ~~children~~~~residents~~ in a child care ~~facility~~~~program~~, either at the facility or other medical setting, shall be made on a fee-for-service basis only if the specific services by that provider are not already included in the rate;

~~(3) Reimbursement of non-Medicaid services, such as room and board, shall be made in accordance with He-C 6422; and~~

~~(4)~~ Payments shall not be made for days when the child is absent from the residential ~~treatment program~~~~facility~~ or foster care ~~program~~~~agency~~ due to ~~running away or~~ hospitalization.

He-C 6420.10 Non-Covered Services.

(a) Facilities that are licensed under RSA 151, such as nursing homes, rehabilitation centers, ~~substance abuse treatment centers~~ and hospitals, ~~are shall~~ not ~~be~~ eligible for this funding source.

(b) The following services and activities shall not be Medicaid covered services ~~under the PNMI program~~ for residential ~~treatment programs~~~~facilities~~ or foster care ~~programs~~~~agencies~~:

(1) Programs, services, or components of services provided to ~~recipients~~~~children~~ which are academic in nature, namely, traditional subjects such as:

- a. Science;
- b. History;
- c. English literature;
- d. Foreign languages; and
- e. Mathematics;

(2) Programs, services, or components of services provided to ~~recipients~~~~children~~ and appropriately billed to the Medicaid to schools program pursuant to He-M 1301;

(3) Programs, services, or components of services provided to ~~recipients~~~~children~~ which are designed to provide a vocational program, namely, those designed to prepare individuals for paid or unpaid employment;

(4) Vocational equipment and uniforms;

(5) Programs, services, or components of services which are designed solely to provide opportunities for socialization or recreation of children where staff will not be providing Medicaid covered services, including:

- a. Picnics;
- b. Dances;
- c. Sporting events;

d. Field trips;

e. Parties; and

f. Social clubs; and

(6) Room and board for the child.

APPENDIX C

RULE	STATUTE
He-C 6420.01	RSA 170-E; RSA 170-G:4; 42 CFR 435.1009
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